



MONTANA FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

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Meeting Date: December 10, 2020

Agenda Item: Prickly Pear Creek Water Right Transfer

Action Needed: Endorsement

Time Needed on Agenda for this Presentation: 5 Minutes

Background: FWP is asking for an endorsement from the Fish and Wildlife Commission to negotiate the terms of a proposed water right transfer that involves eight irrigation water rights and four industrial water right claims on Prickly Pear Creek in Lewis and Clark County. The water rights are historically associated with the old ASARCO Smelter Site located in East Helena and are currently held by the Montana Environmental Custodial Trust (MECT). The Department of Justice's Natural Resource Damage Program (NRDP) has hired a consultant to conduct a thorough review of these water rights. MECT and NRDP have approached FWP on the prospect of permanently transferring these water rights to FWP. Once transferred, FWP would then seek approval from the Department of Natural Resources and Conservation (DNRC) to permanently convert the consumptive portion of these rights to instream flow to benefit the fishery in Prickly Pear Creek. Under this proposal, FWP would negotiate with NRDP and MECT on the terms of the water right transfer, which may include utilizing the consultant's services to assist in advancing the change application(s) through the DNRC's process.

Public Involvement Process & Results: The public involvement process will likely include the preparation of an Environmental Assessment and a comment period. FWP would consider the results of the environmental analysis and the public comments when preparing a final recommendation for the Fish and Wildlife Commission.

Alternatives and Analysis: Instead of permanently acquiring the water rights, FWP could lease the rights from MECT. The lease term could be for up to 10 years and could be renewed an unlimited number of times under present law. While this alternative would save some FWP staff time, it wouldn't meet the objective of the water right owner, which is to transfer the water rights to FWP. If FWP does not accept the water right, MECT could transfer them to another party, which could in turn use the water for a different, possibly consumptive purpose.

Agency Recommendation & Rationale: FWP recommends the Fish and Wildlife Commission endorse this proposal to negotiate the terms of the transfer, and report back to the commission with a recommendation for final action. The water right transfer would permanently protect flows in Prickly Pear for the benefit of the fishery.

Proposed Motion: I move the Fish and Wildlife Commission endorse FWP's efforts to negotiate the terms for the transfer of MECT water rights to the department for purposes of converting them to instream flow, and report back to the Commission with a recommendation for final action.